

February 20, 2020

The Honorable George C. Hanks, Jr.  
U.S. District Judge, Southern District of Texas  
515 Rusk St., Room 6202  
Houston, TX 77002

Re: *U.S. ex rel. Veterans First Medical Systems, Inc. v. Tactile Medical Systems, Inc.*,  
Case No. 4:18-cv-02871 – Court Procedures Rule 6.E.

Dear Judge Hanks:

The attorneys request a conference regarding whether discovery is stayed pending a ruling on the Motion to Dismiss filed by Defendant Tactile Medical Systems, Inc. (“Tactile”). Defendant Tactile believes the stay is warranted and should remain in place. Relator believes discovery has commenced.

By way of background, Tactile filed a Motion to Dismiss on April 5, 2019 [#21 and #30]. Tactile’s Motion to Dismiss argued that the statutes invoked by Relator do not permit its claims and that the Amended Complaint fails to plead fraud with particularity as required by Rule 9(b) under the Federal Rules of Civil Procedure. Tactile believes that significant time and expense may be saved if discovery is stayed pending the outcome of Tactile’s Motion to Dismiss and while the landscape of claims remains unsettled. Relator disagrees with these arguments.

Tactile’s Motion to Dismiss first came before the Court on June 11, 2019 at a pre-trial conference before the Honorable Lynn Hughes. At the conference, Relator asked Judge Hughes for permission to conduct discovery. Judge Hughes declined to authorize discovery and did not issue a Docket Control Order in the case. Judge Hughes took Tactile’s Motion to Dismiss under advisement [#33].

After the case was transferred to this Court, a Scheduling Conference was held on December 2, 2019. During the Scheduling Conference, the Court indicated that it was going to review Tactile’s Motion to Dismiss. At that same time, the Court requested for the parties to submit a Joint Proposed Order. Accordingly, the Parties filed a Joint Proposed Order on December 16, 2019 [#41]. This Court issued its Docket Control Order on January 15, 2020 [#42].

Following entry of the Docket Control Order [#42], Relator served its First Requests for Production on Tactile. Tactile’s position is that discovery is stayed and that the time for its responses to Relator’s requests has not begun to run. Relator’s position is that the Docket Control Order provides a discovery deadline and places no limits on discovery, so therefore discovery is not stayed.

February 20, 2020  
Page 2

The following counsel participated in a telephone conference to resolve this issue on February 3, 2020, at 10:00 a.m. In attendance were B. Scott McBride, John Petrelli, and Kevin Riach for Defendant and Todd Slobin, Sidd Rao and J. Mark Brewer for Plaintiff. The conference call ended without a resolution.

Therefore, the parties respectfully request that this Court clarify whether discovery is stayed pending a ruling on Defendant's Motion to Dismiss.

Respectfully submitted,

**MORGAN, LEWIS & BOCKIUS LLP**

/s/ B. Scott McBride

B. Scott McBride  
TX State Bar No. 24002554  
*scott.mcbride@morganlewis.com*  
John Petrelli  
TX State Bar No. 24056125  
*john.petrelli@morganlewis.com*  
1000 Louisiana Street, Suite 4000  
Houston, TX 77002  
(713) 890-5000 Telephone  
(713) 890-5001 Facsimile

**FREDRIKSON & BYRON, P.A.**

/s/ Kevin C. Riach

David G. Glaser (*pro hac vice*)  
MN State Bar No. 228874  
*dglaser@fredlaw.com*  
Kevin C. Riach (*pro hac vice*)  
MN State Bar No. 389277  
*kriach@fredlaw.com*  
200 South Sixth Street, Suite 4000  
Minneapolis, MN 55402-1425  
(612) 492-7000 Telephone  
(612) 492-7077 Facsimile

**ATTORNEYS FOR DEFENDANT**

February 20, 2020  
Page 3

**AND BY:**

/s/ J. Mark Brewer

J. Mark Brewer, SDTX 9909

(713) 209-2910

*brewer@bplaw.com*

Todd Slobin

*tslobin@eeoc.net*

(713) 621-2277

Sidd Rao

*srao@eeoc.net*

(713) 621-2277

11 Greenway Plaza, Suite 1515

Houston, TX 77046

***ATTORNEYS FOR PLAINTIFF / RELATOR***